

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:17-cr-00117-02

RICHARD J. SALES

MEMORANDUM OPINION AND ORDER

I. Introduction

Pending before the court is the defendant's Rule 35 Motion to Correct Sentence [ECF No. 100]. The deadline for a response to the Motion has passed, and, as of the date of this Order, the Government has not filed a response. Despite the Government's failure to respond to the defendant's Motion, the Motion is **DENIED**.

II. Discussion

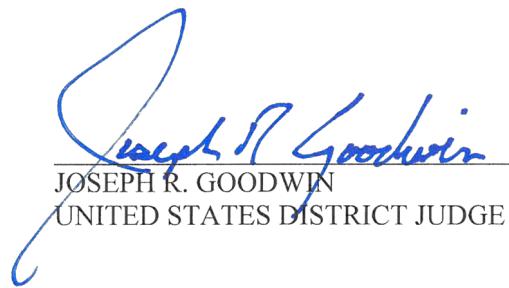
The defendant moves the court, pursuant to Federal Rule of Criminal Procedure 35, for a correction of the sentence imposed in this matter. The defendant was sentenced to 40 months of imprisonment followed by a three-year term of supervised release on November 29, 2018 for conspiracy to distribute a quantity of heroin in violation of 21 U.S.C. § 846. The defendant avers that Title IV of the First Step Act, signed into law on December 21, 2018, "contains provisions for Improved Compassionate Release that were not available for the Court, to consider as intent of the Act, prior to the November 29, 2018 imposition of sentence in this matter." Def.'s

Mot. 1. The defendant asks the court to now “consider that an intent of the Act is to provide improved compassionate release, and had the Act been in place prior to the imposition of sentence, whether the Court, in its discretion, would have imposed a different sentence.” *Id.* at 1–2.

The court finds the defendant’s contentions without merit. The court considered the defendant’s physical health and dialysis treatment in imposing a sentence of 40 months, and the defendant has failed to cite any specific provision of the First Step Act that would render the defendant’s sentence improper. Instead, the defendant only asks the court to consider the “intent” of the First Step Act, which in no way demonstrates that the defendant’s sentence was unreasonable or inappropriate. Accordingly, the defendant’s Rule 35 Motion to Correct Sentence [ECF No. 100] is **DENIED**.

The court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: January 18, 2019



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE